

USSN 10/800,043
Response to Office Action dated September 18, 2006

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REMARKS

Claims 1, 4, 7, 8, 16, 19, 20, 42, 51 and 52 have been amended. Claims 54-62 have been added.

In the Office Action mailed September 18, 2006, the Examiner required restriction to one of the following inventions under 35 U.S.C. § 121:

- I. Claims 1-21 and 42-45,
- II. Claims 22-41 and 46-69,
- III. Claim 50 and 52; and
- IV. Claims 51 and 53.

Applicants provisionally elect group I (claims 1-21 and 42-45) without traverse.

In the event that invention I was elected, the Examiner also required restriction to one of the following inventive groups:

- a) the structure of Formula II, as recited in claims 4-6 or
- b) the structure of Formula III, as recited in claims 7-8 and 19-20.

Applicants provisionally elect elective group b), claims, 7-8 and 19-20 with traverse. Applicants traverse the requirement on the grounds that no serious burden on the Examiner exists. If the search and examination of an entire application can be made without serious burden, it must be examined on the merits even though it includes claims directed to distinct or independent inventions. M.P.E.P. § 803.

Furthermore, since claim 1 links Invention I groups (a) and (b), Applicants request that the restriction requirement be withdrawn if a determination of allowability of claim 1 is issued.

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In the event that Invention I, group b) was elected, the Examiner further required a species election under 35 U.S.C. § 121. The Examiner required election of specific (R), (X), and (Y) groups of the Formula I: $R(X)_m(Y)_n$. The Examiner also required election of one specific value for each of m and n. The Examiner further required election of one (Z) and (A) group from the list recited in claims 7 and 19.

Applicants provisionally elect the following with traverse:

- i). R = alkyl
- ii). m = 6
- iii). X = phosphate
- iv). n = 0
- v). Y = Not applicable because n = 0
- vi). Z = $-OPO_3^-$
- vii). A = $-CH-OPO_3^-$

Applicants traverse the requirement on the grounds that no serious burden on the Examiner exists. For example, a search for an anionic compound comprising (in part) one phosphate group would reveal anionic compounds comprising one, two, three, or any number of such X groups.

In the event that Invention I, and group (b) and the corresponding (R), (X), (Y), (Z), and (A) groups were elected, the Examiner further required a species election of one of the Markush group of claims 8 and 20.

Applicants note at the outset that claims 8 and 20 have been amended. Claim Claims 8 and 20 are no longer Markush type claims. Rather, they are now limited to phytate. New claims, 56 and 59 are directed to glucose-1-phosphate, glucose-6-phosphate, and mixtures thereof.

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Applicants provisionally elect phytate (claims 8 and 20), with traverse. Applicants traverse the requirement on the grounds that no serious burden on the Examiner exists. The Examiner stated in the Office Action that "a search for glucose-1-phosphate would not be coextensive with a search for phytate". However, this is not the correct standard regarding restriction of Markush-type claims. The MPEP states at § 803.02 that "[i]f the members of the Markush group are sufficiently few in number or so closely related that a search and examination can be made without serious burden, the examiner must examine all of the members of the Markush group... even if they are directed to independent and distinct inventions".

The Markush groups of claims 8 and 20 were comprised of only 4 members, glucose-1-phosphate, glucose-6-phosphate, phytate, or mixture thereof. Four is a relatively small number of members for a Markush group. Furthermore, a search for glucose-1-phosphate is coextensive with glucose-6-phosphate. Additionally, the search for one of the glucose molecules would also encompass a search for the combination, since the combination necessarily includes one of the glucose members. Accordingly, practically speaking, the Markush group is comprised of only two members for searching purposes. Therefore, the search does not pose a serious burden on the Examiner and new claims 56 and 59 should be examined along with claims 8 and 20.

In the communication, the Examiner requested that the Applicants provide a listing of all claims readable on the elected species. The following is such a listing corresponding to the species that are provisionally elected: 1-3, 7-21, and 42-45.

Applicants respectfully request that if a determination of an allowable generic claim is issued, that claims written in dependent form or otherwise include all of the limitations of the allowed generic claim should be considered for rejoinder. M.P.E.P. § 809.02(c).

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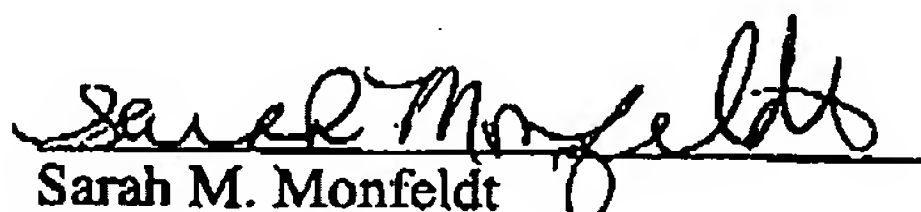
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If the Examiner feels that prosecution of the present application can be materially advanced by a telephonic interview, the undersigned would welcome a call at the number listed below.

Respectfully submitted,

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Date: Nov 16, 2006


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MTS:kf

